

**Amendments to the Drawings:**

The attached Replacement sheet of drawings for Figs. 1 and 2 is submitted in response to the drawing objection as to a label designating Fig. 1 as prior art, as detailed in the Office Action. Approval and entry are respectfully requested, and withdrawal of the objections is respectfully requested.

Attachment: One (1) Replacement Sheet

## **REMARKS**

### **I. Introduction**

With the addition of claims 59 to 62, claims 1 to 19, and 40 to 62 are currently pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statements, 1449 papers, and cited references.

### **II. Objection to the Specification**

The Specification has been amended herein without prejudice to obviate the present objection. Withdrawal of the present objection is therefore respectfully requested.

### **III. Amendment to the Drawings**

In response to the objection to the drawings, a Replacement sheet of drawings is submitted to address the objection to the drawings. Fig. 1 has been amended herein without prejudice to include a label designating the figure as prior art. No new matter has been added. Approval and entry are respectfully requested. Withdrawal of the objections is therefore respectfully requested.

### **IV. Rejection of Claim 1 Under 35 U.S.C. § 112**

Claim 1 stands rejected under 35 U.S.C. § 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In this regard, the Examiner asserts that “[i]t is unclear what the Applicants refer to as ‘data package’ and ‘data element’ as these terms are not normally used in the art.” Notwithstanding the Examiner’s lack of understanding, it is respectfully submitted that the terms “element” and “package” are readily understood. For example, one definition of the term “element,” provided by The Merriam-Webster Dictionary (1997), is “a constituent part,” and one definition of the term “package,” provided by The Merriam-Webster Dictionary (1997), is a “bundle” or “a group of related things offered as a whole.”

Furthermore, claims are not to be read in a vacuum, but in light of the specification. When this rule is followed, and the claims are read in light of what the specification teaches, especially that which is taught, e.g., at page 5, lines 21 to 23, and page 2, lines 24 to 28, Applicants submit that one of ordinary skill in the art would understand how the terms “element” and “package,” respectively, are used in claim 1, *i.e.*, a data element

refers to a component of data, whether it may be a bit, byte, word, logical component by association of various sub-data-components, etc., and a data package refers to one or more data elements packaged together to form a logical data unit. For example, the Specification, at page 5, lines 21 to 23, refers to data elements that are logical components, each including an association of sub-data-components, such as and audio data element, a video data element, a textual data element, a ratings information data element, and a metadata data element; and, at page 2, lines 24 to 28, refers to a data package that is formed by a logical association of audio and video data, and other data, to form a movie or a part of a movie and information concerning the movie or part of the movie.

To the extent that the rejection is based on the Examiner's belief that the claim is overbroad, it is noted that, the breadth of the claim is an inappropriate basis for an objection to the claims. As § 2173.04 of the MPEP, entitled "Breadth Is Not Indefiniteness," states: "Breadth of a claim is not to be equated with indefiniteness." See also *In re Miller*, 169 USPQ 597 (CCPA 1971). Regardless of breadth, if the scope of the subject matter embraced by the claims is clear, and if Applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims are proper. MPEP § 2173.04. A claim therefore can both be broad and, at the same time, clearly demarcate to those of ordinary skill in the art the boundaries of Applicants' invention. The claims in this application set forth what Applicants consider to be their invention. In order to establish that these claims are too broad, that is, that the scope of invention to which Applicants are striving to attain, e.g., without more particularly reciting particular data elements or data packages, is more than what they are entitled to under the Patent Act, specific evidence in the form of references or other publications must be brought forth by the Patent Office. Therefore, the issue of breadth is one that pertains not to the understandability of the claims, since claims that are broad are not inherently indefinite, but to the outer limits of what Applicants are entitled to exclude others from making, using, or selling, limits which are bounded by what is in the public domain and also by what others have already staked out for themselves as their own property. In other words, the proper rubrics for examining the issue of breadth are those of anticipation and obviousness under §§ 102 and 103.

Accordingly, because the claims are already clear and give rise to no ambiguity, no amendment is deemed necessary.

V. **Rejection of Claims 1 to 19, and 40 to 58 Under 35 U.S.C. § 103(a)**

Claims 1 to 19, and 40 to 58 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 5,844,918 ("Kato") and that which the Examiner refers to as "Applicants Admitted Prior Art (AAPA)." Without addressing or agreeing with the Examiner's characterization of any of Applicants disclosure as constituting an admission of prior art, it is respectfully submitted that the combination of Kato and AAPA does not render unpatentable any of the present claims for at least the following reasons.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 1 relates to a method for detecting errors in a data package, and claim 40 relates to an article of manufacture comprising a computer-readable medium having stored thereon instructions adapted to be executed by a processor, the instructions which, when executed, define a series of steps to be used to detect errors in a data package. Each of claims 1 and 40 recites the following:

*... receiving at least two data elements; receiving, separately from the at least two data elements, a set of desired code point values corresponding to a data package; determining a set of current code point values for the at least two data elements; and comparing the set of current code point values to the set of desired code point values.*

Kato provides for transmission of data packets having appended thereto error detecting codes, *i.e.*, the error detecting codes, relied upon by the Examiner as allegedly disclosing the recited code point values, are sent with the data packets, relied upon by the Examiner as allegedly disclosing the recited at least two data elements. The Office Action admits that the combination of Kato and AAPA does not disclose the features of "receiving, separately from the at least two data elements, a set of desired code point values

corresponding to a data package.” Instead, the Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kato for the error correcting codes to be sent separately from the data packets because “transmitting data and corresponding code point values separately would have increased synchronization capabilities.” Office Action, page 6, lines 9 to 12. The Examiner proceeds from articulating that a goal in data communications directly to a conclusion that it would therefore be obvious to transmit data and corresponding code point values separately, without providing any reasoned argumentation for the Examiner’s conclusory assertion. The Examiner does not explain, *nor is it readily apparent without study of the present application*, how separately transmitting data and corresponding code point values would have increased “synchronization capabilities.” The suggestion to modify Kato as proposed by the Examiner is not found in the prior art, but is instead based on Applicants’ disclosure, for example, at page 8, lines 1 to 12 of the Specification, which explains that there is a need to ensure synchronization of data elements so that data elements of a single data package retain their logical association through a network and further explains that transmitting code points separately from data elements with which they are associated provides such synchronization. The Examiner impermissibly uses Applicants’ disclosure as a roadmap for gleaning therefrom a need to modify prior art methods, a particular way in which to modify the prior art methods, and an indication as to how the particular way in which to modify prior art methods satisfies the need. The method described and claimed in the present application runs counter to conventional methods in which an error code associated with a data element is transmitted with or appended to the data element with which it is associated. No reference prior to Applicants’ disclosure discloses this method which runs counter to prior art methods or provides or recognizes in any way any suggestion or motivation to so modify prior art methods of transmitting error detecting codes.

Furthermore, the Examiner is completely silent with respect to the features of determining a set of current code point values for the at least two data elements and comparing the set of current code point values to the set of desired code point values. It is respectfully requested that the Examiner address all of the features recited in claims 1 and 40 in the next Office communication.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of either of claims 1 and 40, so that the combination of Kato and AAPA does not render unpatentable either of claims 1 and 40.

Claim 12 relates to a method for detecting changes in a data package transmitted over a network, and claim 51 relates to an article of manufacture comprising a computer-readable medium having stored thereon instructions adapted to be executed by a processor, the instructions which, when executed, define a series of steps to be used to detect changes in a data package transmitted over a network. Each of claims 12 and 51 recites the following:

*... receiving, from a first network component, a set of current code point values corresponding to a data package at a code point monitor; receiving, from a second network component, a set of desired code point values corresponding to the data package at the code point monitor; and comparing the set of current code point values to the set of desired code point values, wherein the set of current code point values is determined at the first network component based on the data package received by the first network component.*

The Office Action does not address these features recited in claims 12 and 51. The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Kato so that data and code point values are transmitted by different network components because this modification would have increased synchronization capabilities. As an initial matter, as explained above, the Examiner's teaching of a desire to modify the system of Kato to include these features is not found in the prior art, but is rather impermissibly based on Applicants' disclosure, which the Examiner impermissibly uses as a roadmap for teaching a modification of the system of Kato.

Notwithstanding the above, even assuming for argument's sake that it would have been obvious to one skilled in the art at the time the invention was made to modify Kato as suggested by the Examiner without using Applicants' disclosure as a roadmap, the modification still does not disclose, or suggest the features recited in claims 12 and 51, *i.e.*, receiving from different network components **a set of current code point values and a set of desired code point values.**

Furthermore, the Examiner does not at all address the features of comparing the two sets of code point values. It is respectfully requested that the Examiner address all of the features recited in claims 12 and 51 in the next Office communication.

Accordingly, the combination of Kato and AAPA does not disclose or suggest the features of either of claims 12 and 51, so that the combination of Kato and AAPA does not render unpatentable either of claims 12 and 51.

As for claims 2 to 11, which ultimately depend from claim 1 and therefore include all of the features recited in claim 1; claims 13 to 19, which ultimately depend from claim 12 and therefore include all of the features recited in claim 12; claims 41 to 50, which ultimately depend from claim 40 and therefore include all of the features recited in claim 40; and claims 52 to 58, which ultimately depend from claim 51 and therefore include all of the features recited in claim 51, it is respectfully submitted that the combination of Kato and AAPA does not render unpatentable these dependent claims for the same reasons set forth above in support of the patentability of their respective base claims. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) (any dependent claim that depends from a non-obvious independent claim is non-obvious).

Withdrawal of this rejection is therefore respectfully requested.

**VI. New Claims 59 to 62**


Claims 59 to 62 have been added herein. It is respectfully submitted that new claims 59 to 62 do not add any new matter and are fully supported by the present application, including the Specification. Claims 59 to 61 depend from claim 1. Claim 62 includes subject matter similar to that of claim 1. It is therefore respectfully submitted that the combination of Kato and AAPA does not render unpatentable these claims for at least the same reasons set forth above in support of claim 1.

**VII. Conclusion**

In light of the foregoing, it is respectfully submitted that all pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

Dated: 609, 2006

By:   
Michelle Carniaux  
Reg. No. 36,098

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
CUSTOMER NO. 26646